

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

VENUS KETTLEKAMP,

Plaintiff(s),

vs.

HONEYWELL INTERNATIONAL INC.,

Defendant(s).

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Case No. 4:05CV02327

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiff's Motion for Leave of Court to Dismiss Without Prejudice [doc. #20].

I. PROCEDURAL HISTORY

This Court held a hearing regarding Plaintiff's Motion for leave to dismiss the case without prejudice, on December 13, 2006. The Defendant argued that as the case has already proceeded through discovery, and is presently set for trial on March 5, 2007, the Plaintiff should not be permitted to dismiss the case without prejudice, unless they are required to pay the costs incurred by the Defendant in defending the suit. Following that hearing the Court ordered the Defendant to provide the Court with a written statement of the costs that the Defendant has incurred in responding to the Plaintiff's lawsuit. The Defendant provided the court with the written statement, including copies of all bills submitted by the Defendant's counsel to the Defendant's insurance provider in relation to the current litigation. The Plaintiff has again opposed the imposition of any costs as a condition of dismissal without prejudice, and also objects to the amount of costs claimed by the Defendant.

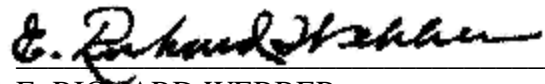
Rule 41 of the Federal Rules provides that “a case shall not be dismissed at the plaintiff’s instance save upon order of the court and upon such terms and conditions as the court deems proper.” Fed. R. Civ. P. 41(a)(2). Since the Plaintiff waited until about three months prior to trial to seek dismissal of this action to locate another expert witness, and due to the extensive pretrial process that has already taken place, the Court deems it proper to grant the Plaintiff’s motion on the condition that if she is allowed to dismiss the action without prejudice that she will be responsible for part of Defendant’s costs. If the Plaintiff does not refile the action, then no payment, from the sum deposited in the Court’s registry, to the Defendant will be required. This Court will dismiss the case without prejudice to allow the Plaintiff to hire an expert witness, once the Plaintiff has deposited with the registry of this Court the sum of \$40,000.00, to cover the Defendant’s costs. If the Plaintiff elects not to deposit the \$40,000.00 in the Court’s registry within thirty days, then the Court will dismiss the case with prejudice. Furthermore, the Plaintiff shall have thirty days after the dismissal without prejudice, to obtain a new expert and to refile the action. Thereafter, the Court will conduct an evidentiary hearing for the purpose of determining the exact amount of costs the Defendant incurred due to the preparation for trial with the former expert whom withdrew, and the costs associated with the delay from the voluntary dismissal. The Court will then order that the Defendant be paid from the Court’s registry the sum the Court determines will compensate the Defendant because of the voluntary dismissal without prejudice. If the Plaintiff fails to find a new expert in the allotted time period, the Court will dismiss the action with prejudice, and order the \$40,000.00 sum refunded to the Plaintiff. Any other requests for costs will be separately considered.

Accordingly,

IT IS HEREBY ORDERED that the Plaintiff shall have thirty (30) days, from the date of this Order, to deposit in the Court's registry the sum of \$40,000.00, to be held for the payment of the Defendant's expenses, in the event that the Plaintiff refiles this action against the Defendant. Upon such deposit by the Plaintiff, the Court will dismiss the present action without prejudice. If the Plaintiff fails to deposit the \$40,000.00 sum, the case will be dismissed with prejudice.

IT IS FURTHER ORDERED that the Plaintiff will have thirty (30) days after the dismissal without prejudice to obtain a new expert, and to refile the case. If the Plaintiff fails to refile within thirty (30) days, then the action will be dismissed with prejudice. In the event the Plaintiff does refile the action within the allowed time period, the Court will make a determination thereafter as to the fees and costs owed to the Defendant as a result of the Plaintiff's dismissal.

Dated this 26th Day of January, 2007.

A handwritten signature in black ink, appearing to read "E. Richard Webber", is written over a horizontal line.

E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE